

# KING & SPALDING

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July 3, 2019

**VIA ECF**

Honorable Donna M. Ryu  
U.S. Magistrate Judge  
United States District Court  
Northern District of California

**Re: Dolby Laboratories Licensing Corporation, et al.  
v. Adobe Inc., No. 4:18-cv-01553-YGR**

Dear Judge Ryu:

Plaintiffs Dolby Laboratories Licensing Corporation and Dolby International AB (“Dolby”) write regarding the “index” that Defendant Adobe Inc. (“Adobe”) submitted to Your Honor *ex parte* describing the 15 communications that were lodged by Adobe with the Court on or around June 4, 2019 in connection with Dolby’s pending privilege challenges to the approximately 4,700 documents withheld by Adobe that do not include any attorney.

During the June 21, 2019 hearing on Dolby’s privilege challenges, Dolby learned for the first time—based on the Court’s comments—that Adobe had submitted with the 15 lodged communications an “index” that “tells [the Court] how I’m supposed to view these documents.” 6/21/2019 Hearing Tr. at 3:18-22. As Your Honor noted at the hearing, this added description by Adobe “really is not appropriate” and was “a form of *ex parte* communication.” *Id.* at 3:20-22. The index was not shared with Dolby at the time it was lodged with the Court.

Dolby is entitled to respond to Adobe’s improper *ex parte* communication, *see* Model Code of Judicial Conduct, Rule 2.9, and is also entitled to review the index so that it may address its contents in connection with its opposition to Adobe’s motion regarding the grounds for its privilege claims, which Adobe will presumably file by the July 5 deadline. *See id.*

Immediately following the hearing, on June 21, Dolby requested that Adobe’s counsel provide a copy of the index to Dolby. Adobe did not respond. On June 26, Dolby again requested that Adobe provide the index. Once more, Adobe did not respond. On July 1, in connection with the submission of a joint case management statement to Judge Gonzalez Rogers, Dolby asked for a third time that Adobe respond to its request for the index that was submitted to Your Honor *ex parte*. Again, Adobe ignored this request, though it responded separately with its sections of the joint case management statement regarding other issues. Finally, on July 2, Dolby again requested the production of the index by no later than July 3. Adobe, even upon

Hon. Donna M. Ryu  
July 3, 2019  
Page 2

Dolby's fourth request, did not respond. The communications by which Dolby requested the index are included at **Exhibit A**.

Because Dolby's opposition to Adobe's privilege motion is due on July 12, Dolby respectfully requests that, as soon as practicable, the Court either:

- (1) order Adobe to immediately provide to Dolby a copy of the *ex parte* index that was submitted by Adobe to the Court; or
- (2) lodge in the Court's file and make available via ECF a copy of the *ex parte* index.

This relief will help remedy any prejudice caused by Adobe's improper *ex parte* submission and will provide Dolby with a fair opportunity to respond in connection with its opposition brief to be filed on July 12.

Respectfully submitted,

KING & SPALDING LLP

/s/ Charles C. Correll, Jr.  
Attorneys for Plaintiffs  
*Dolby Laboratories Licensing Corporation*  
*and Dolby International AB*

# **EXHIBIT A**

**From:** Diamant, Sam  
**Sent:** Friday, June 21, 2019 2:27 PM  
**To:** Berta, Michael A.; Farris, Joseph  
**Cc:** Callagy, Sean M.; Shen, Rachael; Correll, Charles; Meadows, Robert; Baber, Bruce; Morris, George  
**Subject:** Dolby v. Adobe - today's hearing

Mike and Joe,

During today's telephonic hearing on Dolby's challenges to Adobe's privilege log, Judge Ryu referenced an "index" that was provided by Adobe to the Court in connection with Adobe's submission of 13 documents for *in camera* review, on or around June 4, 2019. We have not received a copy of that index, and ask that you provide it to us immediately. Thank you.

Regards -

Sam

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**Samuel R. Diamant**

*Associate*

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**From:** Diamant, Sam  
**Sent:** Wednesday, June 26, 2019 9:19 AM  
**To:** 'Berta, Michael A.'; 'Farris, Joseph'  
**Cc:** 'Callagy, Sean M.'; 'Shen, Rachael'; Correll, Charles; Meadows, Robert; Baber, Bruce; Morris, George  
**Subject:** RE: Dolby v. Adobe - today's hearing

Mike and Joe -

Following up on my message of last Friday. We need to see the index that you lodged with the Court. Will you provide it?

Sam

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Sam Diamant | King & Spalding LLP | 415-318-1222

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**From:** Diamant, Sam  
**Sent:** Friday, June 21, 2019 2:27 PM  
**To:** Berta, Michael A. <[Michael.Berta@arnoldporter.com](mailto:Michael.Berta@arnoldporter.com)>; Farris, Joseph <[Joseph.Farris@arnoldporter.com](mailto:Joseph.Farris@arnoldporter.com)>  
**Cc:** Callagy, Sean M. <[Sean.Callagy@arnoldporter.com](mailto:Sean.Callagy@arnoldporter.com)>; Shen, Rachael <[Rachael.Shen@arnoldporter.com](mailto:Rachael.Shen@arnoldporter.com)>; Correll, Charles <[ccorrell@kslaw.com](mailto:ccorrell@kslaw.com)>; Meadows, Robert <[rmeadows@kslaw.com](mailto:rmeadows@kslaw.com)>; Baber, Bruce <[bbaber@kslaw.com](mailto:bbaber@kslaw.com)>; Morris, George <[gmorris@kslaw.com](mailto:gmorris@kslaw.com)>  
**Subject:** Dolby v. Adobe - today's hearing

Mike and Joe,

During today's telephonic hearing on Dolby's challenges to Adobe's privilege log, Judge Ryu referenced an "index" that was provided by Adobe to the Court in connection with Adobe's submission of 13 documents for *in camera* review, on or around June 4, 2019. We have not received a copy of that index, and ask that you provide it to us immediately. Thank you.

Regards -

Sam

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**From:** Diamant, Sam  
**Sent:** Monday, July 1, 2019 10:46 AM  
**To:** 'Berta, Michael A.'; 'Farris, Joseph'; 'Callagy, Sean M.'; 'Shen, Rachael'  
**Cc:** Correll, Charles; Meadows, Robert; Baber, Bruce; Morris, George  
**Subject:** Dolby v. Adobe - case management statement  
**Attachments:** Dolby-Adobe Joint 26f Case Management Statement 7.1.2019 - K&S Draft 7.1.DOCX

Dear Counsel,

We attach a draft updated case management statement in advance of the July 8 continued case management conference, that the parties will need to jointly file today. Please note that we reserve the right to make changes to Dolby's sections, as our client's review of the attached is ongoing. In the interest of time, we are sending the draft to you now, so that you can add Adobe's sections, and return to us in advance of filing later today.

Also, please respond to my prior emails of June 21 and June 26 regarding whether Adobe will provide to us the "index" previously provided by Adobe to Judge Ryu regarding the parties' privilege disputes.

Thanks -

Sam

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**Samuel R. Diamant**

*Associate*

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July 2, 2019

## VIA E-MAIL

Michael Berta, Esq.  
Arnold & Porter Kaye Scholer LLP  
Three Embarcadero Center, 10th Floor  
San Francisco, California 94111

**Re: Dolby Laboratories Licensing Corporation, et al.  
v. Adobe Inc., No. 4:18-cv-01553-YGR**

Dear Mike:

I am writing to follow up on several important outstanding issues.

### **Expert Deposition Schedule**

We proposed a deposition schedule a week ago today. Last Wednesday, you said you were looking into the proposed dates and would get back to me. Can you confirm any of the dates? While it is always more difficult to schedule depositions in the summer, we both are working closely with our experts with the rebuttal report deadline approaching. In addition, our experts cannot hold the dates we offered indefinitely. Please confirm this week as many dates and locations as possible, if not the entire schedule.

### **Dispute Over Adobe's Claim of Privilege as to Non-Lawyer Communications**

We have asked several times that Adobe produce immediately the index it provided *ex parte* to Judge Ryu when Adobe submitted the 13 documents for *in camera* review on June 4. We have not received any response. Adobe has no basis for withholding the document. Because Adobe gave it to the Court, Adobe must give this index to Dolby. Will Adobe provide it by tomorrow? We need it for our opposition. I would appreciate a response, in light of the holiday, by tomorrow, Wednesday at 12:00 p.m. (PT). If Adobe will not produce the index, we intend to write to Judge Ryu immediately and ask that she order it be produced or simply lodge it in the court files/place it on ECF.

Michael Berta, Esq.

July 2, 2019

Page 2

At the hearing, Judge Ryu offered suggestions about how to narrow the dispute. We had anticipated that Adobe would have made a proposal by now based on her suggestions. In particular:

- Has Adobe decided to withdraw its claim of privilege to any additional documents and to produce them? If so, when do you anticipate that production to occur? What volume of documents should we expect?
- Are there non-material documents that, even though Adobe still believes are privileged, Adobe can produce based on an agreement that such a production is not a waiver of the privilege?
- Is Adobe willing to allow us to review documents we select from your log in your office, again without a claim of waiver, for us to determine if we can agree they are privileged?

I hope we can streamline the dispute over these documents based on Judge Ryu's good suggestions. Please let us know your thoughts.

Very truly yours,



Charles C. Correll, Jr.